

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DEBRA BAKER,)	
)	
Plaintiff,)	E.D. Mo. Case No. 4:18-cv-00751
)	
v.)	Action removed from:
)	Circuit Court of St. Louis County,
FANGIO ENTERPRISES, INC.,)	Mo. Cause No. 18SL-CC001246
)	
and)	
)	
TUESDAY MORNING, INC.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

NOTICE OF REMOVAL

COMES NOW Defendant Tuesday Morning, Inc. through its attorneys, Stanton | Barton, LLC, and pursuant to 28 U.S.C. § 1332 of the Federal Rules of Civil Procedure, for its Notice of Removal states as follows:

I. INTRODUCTION

1. On or about March 20, 2018, Plaintiff Debra Baker filed a Petition for Damages Due to Negligent Design and Sale of Product against Defendants Fangio Enterprises, Inc. and Tuesday Morning, Inc. in the Circuit Court of St. Louis County, State of Missouri, Cause No. 18SL-CC001246.

2. Tuesday Morning was served with Plaintiff's Petition on April 20, 2018.

3. A copy of the complete state court file from the Circuit Court of St. Louis, Missouri is attached hereto as Exhibit A.

4. A copy of the Original Filing form is attached as Exhibit B, and a copy of the Civil Cover Sheet is attached as Exhibit C.

II. GROUND FOR REMOVAL

A. Removal Is Proper Because This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1332 and 1441.

(i) *There Is Complete Diversity Between Plaintiff and Defendants.*

5. Complete diversity of citizenship exists between Plaintiff and Defendants.

6. Plaintiff is a resident of the State of Missouri. (*See* Petition ¶ 1, attached hereto as part of Exhibit A.)

7. Fangio Enterprises is a foreign corporation organized and existing under the laws of the state of Pennsylvania. (*See* Pennsylvania Secretary of State Current Information, attached hereto as Exhibit D.) Therefore, for purposes of this Notice of Removal, Fangio Enterprises is a citizen of a state other than Missouri.

8. Tuesday Morning is a foreign corporation organized and existing under the laws of the state of Texas. Therefore, for purposes of this Notice of Removal, Tuesday Morning is a citizen of a state other than Missouri.

9. Because Plaintiff is a citizen of Missouri and Defendants Fangio and Tuesday Morning are citizens of Pennsylvania and Texas, respectively, complete diversity exists, and this Court has jurisdiction pursuant to 28 U.S.C. § 1332.

(ii) *The Amount-In-Controversy Is Met.*

10. When determining the amount in controversy, the jurisdictional question is not whether the plaintiff alleges damages that are greater than the jurisdictional amount, but whether a fact finder might legally conclude that they are. *Carville v. Sheraton Corp.*, 2009 WL 1393872, *2, No. 4:08CV01567 (E.D. Mo. 2009) (citing *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002)).

11. Here, prior to filing suit, Plaintiff informed Tuesday Morning that her damages were estimated at \$100,000. On May 4, 2018, Plaintiff's counsel confirmed that the amount in controversy was in excess of the jurisdictional limit and refused to execute a stipulation limiting the recoverable amount to \$75,000. (See Exhibit E, E-Mail from Nathan Cohen Dated May 4, 2018; Exhibit F, Correspondence from Jonathan Barton dated April 27, 2018 and Proposed Verified Stipulation for Dismissal); see also *Campbell v. Restaurants First/Neighborhood Rest., Inc.*, 303 F. Supp. 797 (S.D.W. Va. 2004) (customer's demand letter to restaurant's insurer to recover for injuries was sufficient to establish amount in controversy necessary to remove case on basis of diversity jurisdiction).

12. Thus, counsel for Plaintiff has maintained that the amount in controversy exceeds the jurisdictional requirement for removal pursuant to 28 U.S.C. § 1332 of the Federal Rules of Civil Procedure. (*Id.* at ¶ 4.)

III. CONCLUSION

13. For the foregoing reasons, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Accordingly, this removal is proper pursuant to 28 U.S.C. § 1441.

14. Venue is Proper. The United States District Court for the Eastern District of Missouri, Eastern Division, embraces the county in which the state court action is now pending. Thus, this Court is the proper venue for this action pursuant to 28 U.S.C. § 105(a)(1).

15. Removal to Proper Court. This Notice of Removal is filed in the United States District Court for the district and division in which the case is pending. See 28 U.S.C. § 1446(a).

16. Removal Is Timely. This case is removed to this Court under 28 U.S.C. § 1441, and the time for filing this Notice of Removal as set forth in 28 U.S.C. § 1446 has not expired.

This case is being removed within 30 days of April 20, 2018, the date Tuesday Morning was served with process or notice that the case had become removable.

17. Consent to Remove. All defendants who have been properly served at the time of removal have consented in writing to the removal (*see* Exhibit G). *See* 28 U.S.C. § 1446(b)(2)(A).

18. Pleadings and Process. Attached hereto as Exhibit A is a copy of the file-stamped state court Petition filed in the state court action. *See* 28 U.S.C. § 1446(a).

19. Notice. Contemporaneous with the filing of this Notice of Removal, Tuesday Morning is providing written notice thereof to Plaintiff (a copy of which is being separately filed). Tuesday Morning will also file, within three business days of filing this Notice of Removal, proof of filing a Notice to State Court with the Clerk of the St. Louis County Circuit Court, State of Missouri.

20. Signature. The Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

WHEREFORE, Tuesday Morning, Inc. hereby removes the action now pending against it in the Circuit Court of St. Louis County, Missouri, Cause No. 18SL-CC001246, to the United States District Court for the Eastern District of Missouri, Eastern Division.

Respectfully submitted,

STANTON | BARTON LLC

By: /s/ Jonathan T. Barton
Jonathan T. Barton, #47260
Kristin L. Jordan (*admission pending*)
8000 Maryland, Suite 450
St. Louis, Missouri 63105
314-455-6502
314-455-6524 (fax)
jbarton@stantonbarton.com
kjordan@stantonbarton.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of May, 2018, a true and exact copy of the foregoing Notice of Removal has been served upon the following by electronic mail and ordinary U.S. mail:

Nathan S. Cohen
LAW OFFICE OF NATHAN S. COHEN
210 South Bemiston Avenue
St. Louis, Missouri 63105
(314) 727-6088
nathan@nathanscohen.com
Attorneys for Plaintiff